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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 GINA DANNENBRING, an individual,) Case No. 2:12-cv-00007-JCM-VCF
10)
11 Plaintiff,) **STIPULATED PROTECTIVE ORDER**
12) **REGARDING MEDICAL AND**
13 vs.) **OTHER CONFIDENTIAL**
14) **INFORMATION PRODUCED**
15 WYNN LAS VEGAS, LLC, a Nevada limited) **DURING DISCOVERY**
liability company,)
16)
17 Defendant.)
18)
19)
20)

21 Plaintiff Gina Dannenbring and Defendant Wynn Las Vegas, LLC, by and through their
22 respective counsel of record, stipulate and request that this Court issue an Order protecting the
23 confidential nature of certain medical records and other confidential information which may be
24 produced during discovery.

25 **I. Documentation, Information and Medical Records of Plaintiff.**

26 The parties, by and through their respective counsel of record, stipulate and request that
27 this Court issue an Order protecting the confidential nature of certain records regarding Plaintiff
28 made available to Defendant by Plaintiff's health care providers pursuant to subpoenas *duces
tecum* served or to be served on the health care providers during discovery.

29 The parties acknowledge the concerns regarding the confidential nature of the
30 documentation and information requested in the subpoenas *duces tecum* to be served on the
31 health care providers, as well as the legal restrictions placed upon disclosure of some of the
32 documents and information under federal and state statutory law and the potential harm that may

1 result through public disclosure. For this reason, the parties have agreed to the terms of this
2 Stipulated Protective Order as follows:

3 1. The terms of this Stipulated Protective Order shall apply to documents produced
4 by the health care providers in response to subpoenas *duces tecum*, and information contained
5 therein or excerpted therefrom, to include: (a) Plaintiff's medical treatment records; (b)
6 documents referencing medical treatments and/or appointment dates and times; (c) records
7 showing billing and/or payment for services provided to Plaintiff; and (d) records and/or
8 correspondence identifying other health care providers who provided other medical services to
9 Plaintiff.

10 2. The documents and information referenced in Paragraph 1 above, the contents
11 thereof and information contained therein, together with any copies of the same, are hereinafter
12 referred to as "Confidential Patient Information." If a party produces to the other party
13 documents that contain Confidential Patient Information as defined above, that party must
14 designate the document, or a portion of it, as "Confidential" before producing that document to
15 the other party. Such designation shall be made by marking, stamping or typing the words
16 "Confidential" on the document at the time it is produced to the receiving party's counsel.

17 3. Confidential Patient Information may be used only in the above-captioned action
18 and may not be used in any other action for any other purpose unless the party seeking to make
19 such use either (a) acquired the material from a source independent of the above-captioned
20 action, (b) obtains leave of the Court to do so, or (c) obtains written permission of the health care
21 provider to do so. The parties to this case reserve their rights to assert the confidentiality of
22 documents and information produced irrespective of their production pursuant to this Stipulated
23 Protective Order.

24 4. Within sixty (60) calendar days of the entry of the final order concluding this
25 judicial proceeding, all Confidential Patient Information (including all copies made) in
26 Defendant's counsel's custody or control, shall be destroyed and/or returned to the health care
27 providers, except as otherwise ordered by the Court. Counsel of record shall obtain return of
28 such Confidential Patient Information from any person to whom that counsel has made available

1 the Confidential Patient Information. Notwithstanding any other language contained in this
2 Order, each party's counsel of record and in-house counsel shall be allowed to retain for its files
3 a copy of all pleadings, motions, exhibits, or other papers filed and/or lodged with the Court. All
4 such documents and information retained by counsel of record must be maintained in a
5 confidential manner and used only in accordance with this Stipulated Protective Order.

6 5. Nothing in this Stipulated Protective Order shall in any way preclude Defendant
7 from moving to compel production of documents sought in its subpoenas *duces tecum*, but not
8 produced pursuant to this Stipulated Protective Order. Furthermore, nothing in this Stipulated
9 Protective Order shall in any way preclude Defendant from seeking production of documents
10 from other health care providers by way of a subpoena *duces tecum*.

11 6. This Stipulated Protective Order may be amended without prior leave of the Court
12 by the agreement of counsel for the parties in the form of a stipulation and order that shall be
13 filed with the Court.

14 **II. Confidentiality of Certain Other Information Produced During Discovery For Use**
in Non-Dispositive and Dispositive Motions.

15 During the course of discovery in this matter, documents and information considered
16 confidential by at least one of the parties may be disclosed, including but not limited to: medical
17 records; tax and financial records; employment records, and personal identifying information
18 related to current and former employees of Defendant and/or third-party individuals who are not
19 parties to this litigation; information covered by HIPAA; information that would constitute an
20 invasion of privacy as to that individual; documents and information related to internal security
21 investigation procedures and processes, software, and equipment; documents and information
22 related to slot marketing plans and processes, techniques, and software; customer lists and other
23 private customer-related information; Defendant's trade secrets; and other proprietary
24 information of Defendant that is not generally known to the public and having an economic
25 value to its competitors and/or its customers. The parties agree that a protective order is
26 necessary in light of the need to: protect confidential, proprietary, and financial information from
27 public disclosure; the fact that the disclosure of confidential personnel records and information
28

1 could potentially subject the parties to liability from claims by such non-party employees, former
2 employees, and/or third-party individuals; the disclosure of the confidential personnel records or
3 information of non-party employees, former employees, and third-party individuals could harm
4 such individuals, interfere with other job opportunities or relationships, impact their reputation,
5 and cause them undue embarrassment and/or distress; the obligation to protect the confidential
6 personnel records of non-party individuals; the need to protect the privacy interests of
7 Defendant's customers; the need to protect Defendant from the harm arising from the disclosure
8 of confidential, proprietary, and trade secret information not generally known to the public and
9 having an economic value to its competitors, as well as the sensitive nature of Defendant's
10 confidential internal investigations and security measures, the disclosure of which could harm
11 employees, former employees, and/or third-party individuals; and Defendant's ability to secure
12 data and provide a safe environment.

13 For these reasons, if, in the course of this action a party produces answers to
14 interrogatories, documents, or other things which it considers constitute confidential information
15 as defined above, there is deposition testimony which a party believes contains confidential
16 information, or third parties produce information they assert as confidential, the following
17 procedure shall govern pursuant to Federal Rule of Civil Procedure 26(c):

18 1. Any documents (and the contents thereof), things or information falling within the
19 definitions set forth in paragraph (a) immediately following that are produced pursuant to
20 Federal Rule of Civil Procedure 26 or in response to interrogatories and/or requests for
21 production of documents may be designated and marked, in whole or in part, "Confidential" by
22 the party producing the documents or information at the time the documents are made available
23 for inspection by the other party. If so, the following procedure applies:

24 a. "Confidential Information" is defined herein as medical records; tax and
25 financial records; employment records; personal identifying information related to current and
26 former employees of Defendant and/or third-party individuals who are not parties to this
27 litigation; information covered by HIPAA; information that would constitute an invasion of
28 privacy as to that individual; documents and information related to Defendant's internal security

1 investigation procedures and processes, software, and equipment; documents and information
2 related to Defendant's slot marketing plans and processes, techniques, and software; Defendant's
3 customer lists and other private customer-related information; Defendant's trade secrets; and
4 other proprietary information of Defendant that is not generally known to the public and having
5 an economic value to its competitors and/or its customers.

6 b. "Confidential Information" as it relates to deposition transcripts and/or
7 videotape is defined herein as those portions of deposition testimony that references or discusses
8 Confidential Information as described above.

9 c. If a party produces to the other party documents that contain Confidential
10 Information as defined above, that party may designate a document, or a portion of it, as
11 "Confidential" before producing that document to the other party. Such designation shall be
12 made by marking, stamping or typing the words "Confidential" on the document at the time it is
13 produced to the receiving party's counsel.

14 d. Consistent with sub-sections 1(a) and 1(b) above, any party may designate
15 deposition testimony as "Confidential" by orally making this designation on the record either at
16 the commencement of the deposition, at the time the testimony is given, and/or before the end of
17 that day's questioning. Following such designation, the court reporter shall mark "Confidential"
18 on the transcript or portion thereof containing the "Confidential" testimony.

19 e. The Parties agree to limit the use of labeling documents or deposition
20 testimony as "Confidential" to those portions of documents or parts of deposition testimony that
21 actually reveals Confidential Information, and in as limited fashion as possible, and agree not to
22 designate entire transcripts or entire productions or pages of documents unless there is a good-
23 faith belief that it is necessary to designate the entire transcripts or entire productions or pages of
24 documents as "Confidential."

25 f. In addition, documents produced by one party may be designated
26 "Confidential" by the other party by marking the document, in whole or in part, "Confidential"
27 in the same manner and by then forwarding a copy of the marked document to the producing
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1 party. If the documents have been numbered by the producing party, the party seeking the
2 designation may then designate by number each document it believes should be “Confidential.”

3 g. If the receiving party has no objection to the “Confidential” designation,
4 the receiving party may either expressly notify the producing party or allow the fifteen (15)-
5 calendar-day objection period set forth below to lapse. Where there has been no objection made,
6 once the document has been produced to the receiving party the document shall be treated as a
7 “Confidential” document, respectively, pursuant to this Stipulated Protective Order.

8 2. The following conditions shall apply in the event of an objection to the
9 designation:

10 a. If there is an objection to the “Confidential” designation, the party so
11 objecting must notify the other party in writing of the objection and grounds for the objection
12 within fifteen (15) calendar days of the date the designation was made, and the procedure in
13 subparagraph (b), *infra*, shall apply.

14 b. If the parties do not agree that the documents, information or testimony
15 should be treated as confidential, the parties shall attempt to resolve the issue informally. If a
16 resolution does not occur, the party that designated the documents or testimony at issue
17 “Confidential” may file a motion with the Court to resolve the dispute. Such motion must be
18 filed within twenty one (21) calendar days of receipt of the written objection to the designation.
19 If an objection is raised, the documents, testimony and/or information at issue shall be governed
20 by paragraphs 3-9 of this Stipulated Protective Order, and treated and regarded as “Confidential”
21 from the date of disclosure and/or production until the dispute is resolved informally by the
22 parties or a final order is issued by the Court resolving the dispute. If the parties do not
23 informally resolve the dispute and no motion is filed by the party that designated the documents
24 “Confidential,” the documents subject to the dispute shall no longer be deemed “Confidential”
25 under the terms of this Stipulated Protective Order. In filing a motion with the Court, the party
26 proposing that the document, portion of document(s), and/or deposition testimony is Confidential
27 shall have the burden of proof of proving that coverage under the Protective Order is warranted
28 to protect the particular information in dispute. In the event of such motion, the parties having

1 entered into this Stipulation and the existence of the Court's Order entered thereon shall not
2 affect the burden of proof on any such motion, nor impose any burdens upon any party that
3 would not exist had the stipulation and this Stipulated Protective Order not been entered.

4 3. A document or testimony, or portion, summary, or abstract thereof, that is to be
5 treated "Confidential" pursuant to this Stipulated Protective Order shall not be disclosed to any
6 persons other than the parties, counsel of record for the parties, attorneys, legal assistants and
7 clerical personnel employed by them, and other persons to whom disclosure is necessary for
8 purposes of this litigation. Each such person to whom a party makes such disclosure shall read
9 this Stipulated Protective Order and acknowledge in writing that he/she is fully familiar with the
10 terms thereof and agrees to comply with, and be bound by, this Stipulated Protective Order until
11 modified by either further order of the Court or agreement of all the parties.

12 The foregoing obligations of confidentiality, except as established by the Court in this
13 litigation, shall not apply to any of the above persons or parties to the extent that the information
14 is available to the public at the time of production by Plaintiff or Defendant, or which is
15 subsequently disclosed to the public, or such persons or parties by others who are not under
16 obligations of confidentiality to Plaintiff or Defendant, or by the party which had designated the
17 information as "Confidential."

18 4. If either party seeks to attach "Confidential" documents, testimony or information
19 to a discovery or non-dispositive motion, response or reply, only those portions of the motion,
20 response or reply pleading that contain specific reference to the contents of "Confidential"
21 documents or information, and the exhibits that contain such "Confidential" information, shall be
22 filed under seal. The remainder of the pleading and other exhibits, which do not contain
23 "Confidential" information, shall be filed as publicly accessible documents unless otherwise
24 specifically ordered by the Court.

25 5. If either party seeks to attach "Confidential" documents, testimony or information
26 to a motion for summary judgment or other dispositive motion filed with the Court, and for
27 "Confidential" documents which are identified in the joint pretrial order, the following
28 procedures shall apply:

1 a. The party seeking to attach “Confidential” documents, testimony or
 2 information to a motion for summary judgment or other dispositive motion filed with the Court
 3 shall submit to the Court, separate from the motion, an application to seal documents and
 4 memorandum of points and authorities which addresses the issue of whether compelling reasons
 5 exist to seal such documents, testimony or information pursuant to Kamakana v. City and County
 6 of Honolulu, 447 F.3d 1172 (9th Cir. 2006). If the party believes the information previously-
 7 designated as “Confidential” should remain Confidential, then the party’s application will
 8 specifically present articulable facts identifying the interests favoring continuing the secrecy of
 9 the attachments, and shows that these specific interests outweigh the public’s interests in
 10 disclosure sufficient to overcome the presumption of public access to dispositive pleadings and
 11 attachments. Any application to seal documents attached to a motion for summary judgment or
 12 other dispositive motion, or for documents identified in the joint pretrial order, shall be served on
 13 opposing counsel together with the documents proposed to be filed under seal. Opposing
 14 counsel shall have fourteen (14) days from service of any such application to seal in which to file
 15 a response as set forth in LR 7-2(b), unless otherwise ordered by the court.

16 (b) As an alternative to Section II, Paragraph 5(a) of this Stipulated Protective
 17 Order, any party seeking to attach “Confidential” documents, testimony, or information to a
 18 motion for summary judgment or other dispositive motion filed with the Court shall prepare a
 19 stipulation that designates a specific letter, number or other designation other than the name
 20 and/or position of each non-party listed in each “Confidential” document and/or is the subject of
 21 the “Confidential” information.* The letter, number, or other designation shall be used in place of
 22 the individual’s name and/or position, which name and/or position shall be redacted and replaced
 23 by such designation, in any motion for summary judgment, other dispositive motion, or
 24 accompanying exhibit(s) filed with the Court.

25 6. Any “Confidential” documents, testimony, or information, or any pleading or
 26 memorandum purporting to reproduce or paraphrase all or any portion of such confidential
 27 material to be filed under seal with the Court shall be filed under seal pursuant to the procedures
 28 of the United States District Court District of Nevada’s Case Management/Electronic Case Filing

1 System (“CM/ECF”) or as otherwise allowed or provided by the Court. To the extent that
2 “Confidential” documents, testimony, information or documents containing information
3 purporting to reproduce or paraphrase all or any portion of such confidential material takes the
4 form of exhibits or supporting documents to a motion, pleading or memorandum that does not
5 otherwise contain “Confidential” information, the “Confidential” exhibits or supporting
6 documents shall be filed separately from the motion, pleading or memorandum under seal as
7 provided in the CM/ECF procedures.

8 7. Any documents, testimony, and/or information that has been rendered
9 “Confidential” under the parties’ Stipulated Protective Order is to be used only in the above-
10 captioned action, and may not be used in any other action or for any other purpose unless the
11 party seeking to make such use acquired the documents, testimony, and/or information from a
12 source independent of the above-captioned action.

13 8. Within sixty (60) calendar days of the entry of the final order concluding this
14 judicial proceeding, all “Confidential” documents or things, any copies, summaries, and abstracts
15 thereof, or notes relating thereto, shall be returned to the producing party at producing party’s
16 expense, or destroyed, except as otherwise ordered by the Court or stipulated in writing by the
17 parties. Counsel of record shall obtain return of such information, things, and/or documents
18 from any person to whom that counsel has made available the documents or information
19 produced by the other party designated as “Confidential.” Notwithstanding any other language
20 contained in this Order, each party’s counsel of record and in-house counsel and/or any party, to
21 the extent that party does not have counsel of record, shall be allowed to retain for its files a copy
22 of all pleadings, motions, exhibits, or other papers filed and/or lodged with the Court, and of all
23 documents designated by both parties or any non-party as “Confidential” and/or summaries or
24 abstracts thereof (including but not limited to documents of any type prepared by a party and/or
25 counsel that are subject to the attorney-client privilege and/or the attorney work product
26 doctrine). All such documents and information retained by counsel of record or by any party
27 who does not have counsel of record, must be maintained in a confidential manner and used only
28 in accordance with this Order.

1 9. This Stipulated Protective Order may be amended without prior leave of the Court
2 by agreement in the form of a stipulation and order that shall be filed in this case.

3 10. The parties reserve their rights to assert the confidentiality of documents and
4 information produced irrespective of their production pursuant to this Stipulated Protective
5 Order.

6 DATED this 8th day of August, 2012.

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24 Attorneys for Defendant

25 **ORDER**

26 **IT IS SO ORDERED. As amended.**

27 Date: August 10, 2012



28 UNITED STATES MAGISTRATE JUDGE